Supreme Court, U.S.
FILED
JUL 25 2002
OFFICE OF THE CLERK

No. 02-14

In The

Supreme Court Of The United States

NICHOLAS RUSSO,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF IN OPPOSITION

KEVIN T. KANE
State's Attorney
70 Huntington Street
New London, CT 06320
(860) 443-2835
(860) 442-3019 (Fax)

Counsel of Record
for Respondent

JURISDICTIONAL STATEMENT

The petitioner seeks to invoke this Court's jurisdiction pursuant to 28 U.S.C. §1257(a) which authorizes this court to review "[f]inal judgements or decrees rendered by the highest court of a state. . . ." Id. The Connecticut Supreme Court, however, remanded this case to the trial court for further proceedings which have not yet been held.

COUNTERSTATEMENT OF THE CASE

After receiving information from the Hartford Police Department a diversion inspector with the federal Drug Enforcement Administration obtained records of what the state claims to be forged prescriptions from several pharmacies revealing that the defendant had obtained between 7,000 and 8,000 tablets containing Tylenol with codeine, a controlled substance under state and federal laws.

The defendant was subsequently charged in state court with multiple counts of forgery in the second degree and obtaining controlled substances by the forgery of prescriptions. Prior to trial, the defendant moved to suppress the prescription records obtained from the pharmacies. The trial court granted the motion. The state moved for a dismissal on the ground that it had insufficient evidence to proceed and, when the trial court granted the motion, the state appealed to the Connecticut Supreme Court.

The Connecticut Supreme Court reversed the judgment of dismissal and remanded this case to the trial court ". . . .with direction to deny the defendant's motion to suppress and for further proceedings according to law." State v Russo, 259 Conn. 436, 473, 790 A.2d 1132, 1156 (2002). (Pet. App. 41).

REASONS WHY THE PETITION SHOULD BE DENIED

The judgment below is not a final judgment for the purpose of invoking this Court's jurisdiction. This jurisdictional issue is controlled by Florida v. Thomas, 532 U.S. 774 (2001) in which this Court held that a decision by the highest court of a state reversing a trial court's decision granting a motion to suppress and remanding the case for further proceedings is not a final judgment which this court has jurisdiction to review. This case does not fit any of the categories of exceptions to the final judgment rule set forth in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 479-483 (1975) and discussed in Florida v. Thomas, supra. The decision of the Connecticut Supreme Court is not determinative of the outcome of this case and it may be reviewed by this court if the petitioner is convicted after trial. While it might be argued that the fourth Cox category applies because although the petitioner might prevail on non federal grounds after remand and reversal of the Connecticut Supreme Court by this Court would preclude any further litigation, this category applies only where refusal to grant immediate review of a state court decision " . . .might seriously erode federal policy." Florida v. Thomas, supra, 532 U.S. 774; , 121 S.Ct. 1905, 1910. In light of Whalen v. Roe, 429 U.S. 589 (1977), in which this Court upheld New York statutes requiring that copies of all prescriptions for controlled substances be filed with the State of New York because of the federal and state policy to prevent the improper diversion and use of controlled substances, there is no such erosion of federal policy.

The Connecticut Supreme Court held that the records were obtained from several pharmacies with the consent of the pharmacists pursuant to a Connecticut statutory scheme controlling the distribution of controlled substances and providing for both the confidentiality of prescription records and their inspection by law enforcement officials. State v. Russo,

supra, 259 Conn. 436, 447-457 (Pet. App. 11-23). The holding on this issue consisted of factual findings and interpretation of Connecticut statutes by the Connecticut Supreme Court. The factual findings and interpretation of Connecticut Statutes should not be reviewed by this Court. Mullaney v. Wilbur, 421 U.S. 684, 690-691 (1975).

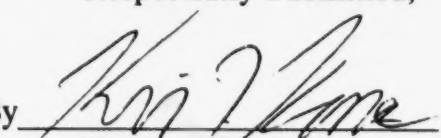
The court further held, relying on Whalen v. Roe, supra 429 U.S. 589, that under the circumstances here which included statutory restrictions on disclosure of this information by law enforcement officers, the defendant's constitutional rights were not violated. Id. 457-473 (Pet. App. 23-41). This was a proper application of the holding in Whalen v. Roe.

The petitioner has shown no compelling reason why this petition for certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

By 

Kevin T. Kane
State's Attorney
Counsel of Record for the
Respondent
70 Huntington Street
New London, CT 06320
(860) 443-2835